Supreme Court, U.S.
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No. 00-1386

In The

Supreme Court of the United States

CLIFFS ON THE BAY CONDOMINIUM ASSOCIATION,

Petitioner,

v.

EARL D. SMITH AND SUZANNE C. SMITH,

Respondents.

On Petition For A Writ Of Certiorari To The Michigan Supreme Court

BRIEF IN OPPOSITION

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TABLE OF CONTENTS

Page

COUNTER-STATEMENT OF THE CASE..... 1

REASONS FOR DENYING THE WRIT 6

CONCLUSION 17

APPENDIX

AFFIDAVIT OF WILLIAM WILKINS .....App. 1

TABLE OF AUTHORITIES

Page

CASES:

Ballard v. Hunter, 204 US 241, 51 L Ed 461, 27 S Ct 261 (1907) 7

City of Atlantic City v. Block C-11, Lot 11, 74 NJ 34, 376 A2d 926 (1977), app'l dismissed 434 US, 1055, 55 L Ed 2d 755, 98 S Ct 1222 (1978) 9, 10

Clark v. Jones, 519 NE2d 158 (Ind Ct App 1988) 13

Covy v. Town of Somers, 351 US 141, 100 L Ed 1021, 76 S Ct 724 (1956) 8

Dahn v. Trownsell, 1998 SD 36; 576 NW2d 535 (SD 1998) 14

Dow v. State of Michigan, 396 Mich 192, 240 NW2d 450 (1976) 3, 4

Huling v. Kaw Valley Ry. & Improvement Co., 130 US 599, 32 L Ed 1405, 95 S Ct 603 (1889) 7

Keiser v. Young, 181 AD 2d 170; 585 NYS 2d 880 (1992) 10

Longyear v. Toolan, 209 US 414, 52 L Ed 859, 28 S Ct 506 (1908) 8

Mennonite Board of Missions v. Adams, 462 US 791, 77 L Ed 180, 103 S Ct 2706 (1983) 8, 12

Mullane v. Central Hanover Bank & Trust Co., 339 US 306, 94 L Ed 865, 70 S Ct 652 (1950) 7, 8, 9, 10, 12, 13

Nelson v. New York, 352 US 103, 70 S Ct 195, 1 L Ed 2d 171 (1956) 10

Robinson v. Hanrahan, 409 US 38, 34 L Ed 2d 47, 93 S Ct 30 (1972) 8

TABLE OF AUTHORITIES – Continued

Page

Schwartz v. Dey, 780 SW 2d 42, 44-45 (MO 1989) 11

Texaco, Inc. v. Short, 454 US 516, 70 L Ed 2d 738, 102 S Ct 781 (1982) 7

Tracy v. County of Chester Tax Claim Bureau, 507 Pa 288, 489 A 2d 1334 (PA 1984) 14, 15

Van Raden Homes, Inc. v. Dakota View Estates, 546 NW2d 843 (ND 1996) 13

COUNTER-STATEMENT OF THE CASE

In this case, real property taxes on a 1¼, acre parcel of property went unpaid for a number of years. The parcel is adjacent to a condominium development. Petitioner is the condominium association for the condominium development. Petitioner acquired title to the parcel in 1973. Notices regarding the annual taxes due and the failure to pay those taxes for 1977 were sent to Petitioner at its last known address by the Treasurer of Ypsilanti Township, where the property was located, and by the Treasurer of Washtenaw County, the County in which the Township is located. The last known address was the address on the deed conveying the property to Petitioner, which was also the address to which the 1976 taxes had been sent. On May 5, 1981, the State of Michigan acquired title to the property because of Petitioner's failure to pay the 1977 taxes. The State recorded its deed in September of 1981.

Under Michigan law, a prior property owner has five years to redeem real property sold for property tax delinquency. Michigan statute requires that the County Treasurer send a notice that the redemption period is expiring to the address last known by and contained in the records of the County Treasurer. That address is the address in the deed to Petitioner. For lands deeded initially to the State for tax delinquency, Michigan statute also requires the State Treasurer to send a notice regarding an additional redemption period. Pursuant to that statute, in March of 1982 the Michigan Department of Treasury sent a notice to Petitioner that its redemption period was expiring. That notice, which was also sent to the address

last known by the County Treasurer, was returned "not deliverable as addressed."

On September 10, 1987, more than six years after the State gained title to this property, Respondents acquired title to it at a State sale. From that date to present, Respondents have annually paid the taxes due on the property and maintained the property. Petitioners took no action to assert title to the disputed parcel prior to Respondents acquiring it. Indeed, even after learning of Respondent's purchase of the property, Petitioner took no action whatsoever until February of 1991, when it filed an affidavit in the chain of Respondent's title. That affidavit was signed by William Wilkins, then president of Petitioner. See Appendix. The affidavit asserted that "for reasons unknown to the present Board of Directors" the 1977 property taxes on the parcel "were not paid." The affidavit stated that the association had filed notices with the State Corporations and Securities Bureau regarding changes in the address of its business office and registered agent. Finally, the affidavit stated that the State's notice of a redeemable property interest had been returned not deliverable as addressed, and claimed title to the property because the State Department of Treasury had not looked through the records of other State Departments to find that a change of address of the corporation's business office had been filed in the records of the Corporations and Securities Bureau, a department of the Office of Commercial Services, itself a division of the Department of Consumer and Industry Services.

After filing the affidavit clouding Respondent's title, another five years passed during which Petitioners still took no action whatsoever to set aside the state sale of the

parcel to Respondents, to clarify the title, or to pay any taxes on the property. Finally, in March of 1996 Respondents filed an action in a state circuit court to remove the cloud on their title caused by Petitioner's affidavit.

Petitioner filed an answer, affirmative defenses and counterclaim in the state circuit court action. Petitioner asserted that it was not given "proper notice" of the tax sale; that the State's sale was "void;" that they were entitled to the property; and that they owed Respondents nothing, despite the fact that Respondents had acquired the property in a state tax sale and had paid the taxes on the property for, at that time, nine years. Even though Petitioner claimed that the State's sale of the property to Respondents was void, Petitioner made no attempt to join the State as a party to the action or otherwise set aside the State's sale to Respondents. Respondents answered the counterclaim asserting that the State's attempts to notify Petitioner of its right of redemption were sufficient to comply with Due Process and that Petitioner was, in any case, barred by the doctrine of laches because of its lengthy failure to take any steps to assert its claims.

The Circuit Court granted Respondent's motion for partial summary judgment, holding that the State's deed to Respondents was valid. The Respondent's assertion of laches was not, therefore, adjudicated.

On appeal to the Michigan Court of Appeals, Petitioner claimed that the notice sent by the State regarding its redeemable interest in the property was inadequate under *Dow v State of Michigan*, 396 Mich 192, 240 NW 2d 450 (1976). The Court of Appeals reversed the Circuit Court's grant of summary judgment to Respondents,

holding that when the State's notice regarding the near expiration of the redemption was returned to the Department of Treasury "not deliverable as addressed," the Department of Treasury should have made additional investigation to attempt to discover if some other state agency or department had an address for Petitioner. The Court of Appeals held that latches was not applicable, despite the issue not having been ruled on by the Circuit Court.

Respondents then filed an application for leave to appeal with the Michigan Supreme Court. In lieu of granting that application, the Michigan Supreme Court vacated the judgment of the Court of Appeals and remanded the case for consideration of the motions for summary judgment in light of its opinion in *Dow* and a section of the Michigan Consolidated Laws, which provides a six months statute of limitations for attacks upon tax deeds issued by the State.

After both Petitioner and Respondent asserted that it was not clear what the Supreme Court wanted the Circuit Court to do on remand, the Supreme Court vacated its previous order and remanded the matter to the Circuit Court with a specific laundry list of factual matters which it wanted the parties to determine at the Circuit Court and report back to the Supreme Court. The Supreme Court retained jurisdiction of the application for leave to appeal pending determination of those facts.

On November 23, 1999, the Circuit Court entered an order setting forth those facts which the parties were able to determine, and identifying other items on the Supreme Court's list that could not be determined because of the

absence of records or proof by either party. That order was transmitted to the Michigan Supreme Court.

On October 10, 2000, in lieu of granting leave to appeal, by per curiam opinion the Michigan Supreme Court reversed the decision of the Court of Appeals, finding that the Michigan statutory notice provisions met the Due Process requirement that the notice procedure must be "by such means as one desirous of actually informing the property owner might reasonably adopt." The Supreme Court then remanded this matter to the Court of Appeals for consideration of the issues not previously considered in its earlier decision.

Petitioner's application for a writ of certiorari followed.

Petitioner's Petition for a writ of certiorari, at page 3 misstates the record. Petitioner there claims:

> The Association and its members were not aware that the disputed property and the land comprising the Condominium Project were separate parcels. Rather, it was believed that the disputed property was already a part of the Condominium Project, and that it was a general common element thereof. Accordingly, the Association and its members also believed that the property taxes they paid also encompassed that parcel of property. . . .

Other than deeds and State records, the only facts presented by Petitioner in opposition to the motion for summary judgment were two affidavits of William Wilkins. The 1991 affidavit of Mr. Wilkins, which created the cloud on Respondents' title, asserted in paragraph 9:

> That for reasons unknown to the present Board of Directors the 1977 real property taxes for said property were not paid and on May 9, 1981, the property was sold for non-payment of taxes by the Washtenaw County Treasurer and was purchased by the State of Michigan.
>
> Affidavit attached as Exhibit 1.

There is nothing in the record below to support Petitioner's assertions that:

1. "The Association and its members were not aware that the disputed property and the land comprising the Condominium Project were separate parcels."

2. "[I]t was believed that the disputed property was already a part of the Condominium Project, and that it was a general common element thereof."

3. "[T]he Association and its members also believed that the property taxes they paid also encompassed that parcel of property. . . . "

REASONS FOR DENYING THE WRIT

A writ of certiorari should be denied in this case for two reasons. First, the notice provided for in the Michigan statutory scheme satisfies Due Process requirements as has been set forth in previous decisions of this Court. Secondly, the factual record in this case is so deficient as to make it inappropriate for review by this Court.

I. THIS COURT SHOULD DENY REVIEW BECAUSE THE NOTICES GIVEN BY YPSILANTI TOWNSHIP, WASHTENAW COUNTY, AND THE STATE OF MICHIGAN COMPORT WITH THIS COURT'S PRIOR HOLDINGS REGARDING DUE PROCESS NOTICE REQUIREMENTS.

The Michigan Supreme Court correctly found that the notices mailed to Petitioner in this case meet the requirements of Due Process. After summarizing the state's scheme for enforcing the payment of real property taxes, the Michigan Supreme Court explained the statutory scheme that caused the mailing of notices to Petitioner by the Ypsilanti Township Treasurer, the Washtenaw County Treasurer, and the Treasurer of the State of Michigan. The Court found that there was nothing in the record of this case to show that any of these offices had ever been informed of a new address for Petitioner. Finally, the Michigan Supreme Court held that, "The fact that one of the mailings was returned by the post office as undeliverable does not impose on the state the obligation to undertake an investigation to see if a new address for the association could be located." There is nothing in the holding of the Michigan Supreme Court that is contrary to *Mullane v Central Hanover Bank & Trust Co.*, 339 US 306, 94 L Ed 865, 70 S Ct 652 (1950), or any decision of this Court.

Landowners are responsible for their own lands. *Ballard v Hunter*, 204 US 241, 262, 51 L Ed 461, 27 S Ct 261 (1907); *Huling v Kaw Valley Ry. & Improvement Co.*, 130 US 559, 564, 32 L Ed 1045, 95 S Ct 603 (1889). Indeed, there is a presumption that landowners know the laws affecting their property. *Texaco, Inc. v Short*, 454 US 516, 532 and n.25, 70 L Ed 2d 738, 102 S Ct 781 (1982); *Ballard*, 204 US

at 254-55. It is presumed that landowners understand the duty to pay property taxes and the inherent risk of property forfeiture for failure to pay taxes. *Longyear v Toolan*, 209 US 414, 418, 52 L Ed 859, 28 S Ct 506 (1908).

Although *Mullane v Central Hanover Bank & Trust Co.*, 339 US 306, 94 L Ed 865, 70 S Ct 652 (1950), relied upon by Petitioner, involved a notice issue for settlement of an accounting of banking trust funds, it has been applied widely to notice issues regarding real property tax sales. *Mullane* held that in such matters notice by publication was not adequate, and that notice in all tax proceedings must be that which is "reasonably calculated, under all the circumstances" to reach parties whose names and addresses are known. 339 US, at 314. The holding in *Mullane* was specifically recognized by the Michigan Supreme Court in its opinion in the instant case. Later, in *Mennonite Board of Missions v Adams*, 462 US 791, 77 L Ed 2d 180, 103 S Ct 2706 (1983), this Court held Due Process required a mortgagee whose interest in a parcel of real estate would be lost by a tax sale to be notified by mail. This Court held that Due Process would be satisfied by service by mail sent to the address on the publicly recorded mortgage. *Id.*, at 798. Such notice was exactly the notice given in the instant case.

Petitioner also relies upon *Robinson v Hanrahan*, 409 US 38, 34 L Ed 2d 47, 93 S Ct 30 (1972) and *Covy v Town of Somers*, 351 US 141, 100 L Ed 1021, 76 S Ct 724 (1956). Neither of these cases are relevant to the case at bar. In *Hanrahan*, the State arrested Petitioner for a crime, locked him up in the county jail, and then knowingly sent a notice of forfeiture of his automobile to his home address. At the time that the notice was sent, the government was fully aware that Petitioner could not and would not

receive notice of the forfeiture proceedings. In *Covy*, the government sent notice of a tax foreclosure to a person known for 15 years to be incompetent and without a guardian. This Court held that notice by mail to such a person was constitutionally insufficient. The instant case does not present a situation anything like that presented in those two cases. Here, Petitioner is a corporation with officers and a board presumed to be competent to protect its rights. Here, the taxing authorities did not actively attempt to prevent Petitioner from receiving notice. The opinion of the Michigan Supreme Court does not conflict with these or any other opinion of this Court.

II. THIS CASE DOES NOT PRESENT A SUBSTANTIAL FEDERAL ISSUE DESPITE THE ALLEGED CONFLICT WITH A DECISION OF THE SUPREME COURT OF PENNSYLVANIA.

The highest court of several states have addressed the issue presented in the instant case. In *City of Atlantic City v. Block C-11, Lot 11*, 74 NJ 34, 376 A2d 926 (1977), the New Jersey Supreme Court held that municipalities are not constitutionally required to search out taxpayers in foreclosure suits to see if they have furnished up-to-date addresses. In *City of Atlantic City*, appellant's property was forfeited to the city following a failure to pay property taxes. As in the present case, the municipal tax records contained a no longer valid address, and all notices regarding the forfeiture were sent to that address. The Supreme Court of New Jersey held that *Mullane* does not require municipalities to take additional steps to search out stale addresses or search out correct addresses:

> Mrs. Schoenthal's [appellant's] argument goes substantially beyond the Supreme Court's holding in *Mullane*, and would place on a municipality the affirmative duty of ascertaining whether the name and address listed on its tax roles are correct. In *Mullane v. Central Hanover Bank & Trust Co.*, the Court recognized that administrative limitations might hamper notification efforts, and stated that "impracticable and extended searches are not required in the name of due process." 339 U.S. 306 at 317-18, 70 S Ct 652 at 659, 94 L Ed 865 at 875. Significantly, the Court there overruled any constitutional objections to published notice raised on behalf of persons whose interests or addresses were unknown, and limited relief to "known present beneficiaries of known place of residence." *Id.* See also, *Nelson v. New York*, 352 U.S. 103, 108, 70 S Ct 195, 198, 1 L Ed 2d 171, 175 (1956) (rejecting a similar argument that municipal authorities "should have known from the state of the records . . . that mailed notice would probably be ineffective.")
>
> *74 NJ, at 40*

The appeal in *City of Atlantic City* was dismissed by this Court "for want of substantial federal question." 434 US 1055, 55 L Ed 2d 755, 98 S Ct 1222 (1978).

In *Keiser v Young*, 181 AD 2d 170; 585 NYS 2d 880 (1992), the delinquent taxpayer claimed a denial of Due Process, in part because the village and the county did not share updated address information. The New York Appellate Division rejected the argument, holding, as in the instant case, that use of the address on the deed for the required notices satisfied Due Process:

> Defendant contends initially on this appeal that the post-office box address was not her correct mailing address and that, because certain notices were returned to the County 'unclaimed', the County was required to take additional steps to achieve notice. This claim is unavailing . . . Here, the uncontradicted proof in the record establishes that the mailing address for defendant shown on the relevant assessment roll and used by the County was the same as that contained in both defendant's deed to the property. . . .
>
> Defendant may not prevail in this case by asserting merely that she did not know any taxes were due, because as the property owner she was charged with knowledge that real estate taxes would regularly be levied . . . Equally unpersuasive is defendant's contention that, because she received tax bills at the property location (i.e. her street address) from third-party defendant Village of Liberty, the County should have been aware that the street address was her correct mailing address. It is clear that the County and the Village are separate taxing authorities and maintain separate assessment and tax rolls.

Id., at 173-174.

In *Schwartz v Dey*, 780 SW 2d 42, 44-45 (MO 1989), the Missouri Supreme Court held there is no duty to confirm whether the owner's "publicly recorded address" is the most recent address available:

> Plaintiffs argue, for instance, that the collector could have found their Maryland address by going to the recorder's office and examining the deed to the property. They concede that their

> mailing address as shown by the deed is incorrect. . . . Plaintiffs also argue that the collector could have effected notice by locating and/or contacting their tenants. These scenarios place upon the collector a substantially greater duty than that envisioned by *Mullane* and *Mennonite* because they require the collector to ascertain whether the owners' publicly recorded address is correct. The collector is not required to make "impracticable and extended searches . . . in the name of due process." *Mullane*, 339 U.S. at 317, 318. Nor is he "required to undertake extraordinary efforts to discover the . . . whereabouts of [the owner]." *Mennonite*, 462 U.S. at 798 n.4.
>
> Our inquiry does not end with the efforts by the collector to notify taxpayers. We are also concerned with the means available to plaintiffs to safeguard their property interest. *Mullane*, 339 U.S. at 316. Plaintiffs in this case have paid real property taxes in Maryland. They know such taxes are payable in Missouri. They knew specifically that they were obligated to pay the taxes for the remainder of 1978. They have not, however, made any effort to contact the collector concerning their taxes.
>
> * * *
>
> We stated in *Trapf*, "At some point a property owner's presumptive duty to preserve his property outweighs the responsibility of a tax collector to provide more extensive forms of notice." *Trapf*, 666 S.W.2d at 415.

The South Dakota Supreme Court recently ruled that it is not the responsibility of the government to maintain current addresses for property owners, and that Due Process was satisfied when notice of a proposed property

sale was sent to the owner's last known address, noting that the owner had a duty to inform the taxing authority of a current address:

> . . . [W]e give "due regard for the practicalities and peculiarities of the case" to determine whether the challenged notice provision is constitutionally valid. *Mullane*, 339 U.S. at 314-15. The realities of this case are that counties rely upon the cooperation of property owners to provide accurate information so that counties may discharge their taxation duties efficiently and effectively. Furthermore, it is not practical to place the burden upon counties to maintain current addresses on every owner of property within the county. As individual property owners change their residence, it is incumbent upon them to notify counties of their address.
>
> * * *
>
> . . . North Dakota has a similar statutory notice scheme and its supreme court has recognized that occasionally, even strict compliance with all of [the] requirements for serving notice by registered mail will result in a notice being returned to the county undelivered. *Van Raden Homes, Inc. v. Dakota View Estates*, 546 N.W.2d 843, 854 (ND 1996). . . .
>
> * * *
>
> . . . By requiring Dahn [the taxing authority] to send his NITTD [notice] to Trownsell's "last known address," the legislature unambiguously "placed a duty upon" Trownsell to inform the county of his current address. *Clark v. Jones*, 519 N.E.2d 158, 160 (Ind.Ct.App 1988) (citing *Holland*, 500 N.E.2d at 1233). This is certainly a reasonable requirement. The Clark court

> went on to hold that "even if the auditor knew that mail was being returned from [the last known address where the tax deed sale and notice were sent], the notice statutes and constitutional due process requirements do not impose . . . a duty to search for an alternative address."
>
> *Dahn v Trownsell*, 1998 SD 36; 576 NW 2d 535, 540-542 (SD 1998).

Petitioner asserts that review of the instant case should be granted because of a conflict with the Pennsylvania Supreme Court's opinion in *Tracy v County of Chester Tax Claim Bureau*, 507 Pa 288, 489 A 2d 1334 (PA 1984). In *Tracy*, Tyrone Development Company, a partnership, was the grantee on the deed of a piece of real estate filed in 1974. In 1976, Tyrone paid the taxes to the applicable borough with a check that showed a new address for the company. The borough, which like the township in the instant case, is the tax collecting authority, did not, however, change the address on its records. The next year the borough sent out the tax notice to the old address. Later, the Tax Claim Bureau sent a notice to the old address, which was forwarded by the post office to another address pursuant to a forwarding order. The taxpayer ignored the notice thinking it had already paid the tax. About a year later, the Tax Bureau sent a notice of impending tax sale to the old address, which was returned because of the expiration of the one year forwarding order. Ultimately, the property was sold for tax deficiency. In a subsequent action to set aside the state tax sale, the trial court held that the borough tax collector was on notice that there had been an address change from the new address on the check paying the prior year's

taxes. On appeal to the Commonwealth Court, the court reversed, holding that the printing of a new address on a check, without more, was not notice to the tax collector of a change of address. On review, the Pennsylvania Supreme Court recognized prior cases that held that "tax authorities need not search . . . deed records for owners." In reversing the Commonwealth Court, the Pennsylvania Supreme Court held, however, that a search could have been made of the records of the Secretary of the Commonwealth to determine the addresses of the partners. In that regard, *Tracy* does conflict with the decision of the Michigan Supreme Court. On the other hand, it is not clear that Pennsylvania would have required a search of the Secretary's records if the address on the deed was the same as the address to which the tax notices had been sent. In any case, *Tracy* is outside of the strong prevailing opinion of the states.

III. THIS COURT SHOULD NOT REVIEW THIS CASE BECAUSE OF THE INADEQUACY OF THE RECORD BELOW.

Even if this Court wanted to review the issue presented, it should not do so in this case. Due Process notice issues present matters that must be reviewed in light of the particular circumstances presented. In the instant case, neither party has been able to establish a substantially complete picture of the circumstances. No depositions were taken. It is unknown whether Petitioner filed a change of address and/or forwarding notice with the post office, or otherwise made any attempt whatsoever to notify the Township or County or State Treasurer of a change of address. It is unknown whether the

tax notices for the preceding year, 1976, were delivered to Petitioner or returned to the Township. Indeed, the record below does not even disclose whether any taxes were paid on the subject property for the 1976 year. It has not even been established that the Petitioner did not have actual notice of the 1977 tax assessment. Petitioner has produced nothing other than an affidavit of the current President of the Association who says that in reviewing the records available to him, he cannot find any information about the matters here at issue. The record is completely silent as to what records are available to the current President. No person who was an officer of Petitioner in 1977 has supplied any information. Moreover, the interests of the State of Michigan were not represented as no governmental entity was made a party to the action. In short, this record is not the sort of factual development that will even permit the review of the issues sought to be presented by Petitioner.

CONCLUSION

For the reasons stated above, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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AFFIDAVIT

COUNTY OF WASTHENAW)
) SS
STATE OF MICHIGAN)

WILLIAM WILKINS, being first duly sworn, states as follows:

1. That he is the President of Cliffs on the Bay Condominium Association, a Michigan non-profit corporation, of 339 E. Liberty Street, Suite 300, Ann Arbor, Michigan.

2. That said corporation was incorporated by the State of Michigan on June 13, 1972, with a registered office at 770 S. Adams, Suite 110, Birmingham, Michigan 48011.

3. That on October 3, 1975, said corporation filed a Certificate of Change of Registered Office and/or Change of Resident Agent with the State of Michigan notifying it that its new registered office was at the Ann Arbor Trust Company, P. O. Box 12, Ann Arbor, Michigan 48107.

4. That on August 15, 1979, said corporation filed a Certificate of Change of Registered Office and/or Change of Resident Agent with the State of Michigan notifying it that its new registered office was at the 1734 Grove Road, #B-204, Ypsilanti, Michigan 48197.

5. That on January 3, 1985, said corporation filed a Certificate of Change of Registered Office and/or Change of Resident Agent with the State of Michigan notifying it that its new registered office was at the 527 E. Liberty Street, Suite 208, Ann Arbor, Michigan 48102.

6. That on February 6, 1989, said corporation filed a Certificate of Change of Registered Office and/or Change of Resident Agent with the State of Michigan notifying it at its new registered office was at the 339 E. Liberty Street, Suite 300, Ann Arbor, Michigan 48104.

7. That on October 10, 1973, Bay Properties, a Michigan co-partnership, of 770 S. Adams, Suite 202, Birmingham, Michigan, quit claimed to the Cliffs on the Bay Condominium Association, a Michigan non-profit corporation, the following described premises situated in the Township of Ypsilanti, County of Washthenaw, State of Michigan, to wit:

> Beginning at the intersection of the North and South 1/4 line of Section 14, Town 3 South, Range 7 East, with the centerline of Grove Road as set forth in the recorded plat of "NANCY PARK NO. 6" as recorded in Liber 12 of Plats on Pages 25 and 26 of Wasthenaw County Records; thence South 80 degrees 39 minutes 30 seconds West 599.97 feet along the centerline of Grove Road; thence South 9 degrees 20 minutes 35 seconds East to the 686 foot contour U. S. G. S.; thence Northeasterly along this contour to the 1/4 line; thence along 1/4 line North 0 Degree 35 minutes 40 seconds West to the Point of Beginning,

which was recorded on October 24, 1973, in Liber 1459, Page 381, Wasthenaw County Records, a portion of which was deeded by Cliffs on the Bay Condominium Association to the Wasthenaw County Road Commission by a quit claim deed recorded December 15, 1975, in Liber 1533, Page 928, Wasthenaw County Records.

8. That for reasons unknown to the present Board of Directors of Cliffs on the Bay Condominium Association the Township of Ypsilanti, Washtenaw County, Michigan, failed to take the portion of said property retained by the Association off of the tax rolls after it became owned by a non-profit corporation.

9. That for reasons unknown to the present Board of Directors the 1977 real property taxes for said property were not paid and on May 9, 1981, the property was sold for non-payment of taxes by the Washtenaw County Treasurer and was purchased by the State of Michigan.

10. That on March 2, 1982, Thomas L. Willard, an employee of the Bureau of Local Governmental Services of the Department of State Treasurer signed a Proof of Notice to Owners of Significant Property Interest and Notice of Hearing that was recorded on May 18, 1982, in Liber 1837, Page 662, Washtenaw County Records, indicating that his Bureau had attempted to contact Cliffs on the Bay Condominium Association at 770 S. Adams, Suite 202, Birmingham, Michigan 48011, but that correspondence had been returned by the United States Post Office for the reason that it was "Not Deliverable As Addressed."

11. That prior to said date the Cliffs on the Bay Condominium Association had on two occasions notified the State of Michigan of a change in its registered office and mailing address.

12. That the State of Michigan failed to check its own books and records concerning the registered office of

a Michigan corporation and consequently failed to provide Cliffs on the Bay Condominium Association with the statutory notice to which it was entitled.

13. That on September 10, 1987, the State of Michigan conveyed its interest in the subject property to Earl D. Smith and Suzanne C. Smith, his wife, of 5810 Whittaker Road, Ypsilanti, Michigan, by a deed recorded on November 13, 1987, in Liber 2189, Page 3, Washtenaw County Records.

14. That by the time of said conveyance the State of Michigan had received three Notices of Change of Registered Office and Mailing Address for Cliffs on the Bay Condominium Association, but nevertheless failed to ever notify Cliffs on the Bay Condominium Association of the potential loss of its interest in the subject property.

15. That Article XIV of the United States Constitution and Article 1, Section 17, of the 1963 Michigan constitution guarantee to Cliffs on the Bay Condominium Association the right to due process in governmental taking of its property. The due process clause requires that Cliffs on the Bay Condominium Association be given proper notice and an opportunity for hearing to contest the claim of the State of Michigan that it may take property for nonpayment of taxes.

16. That the State of Michigan failed to direct such notice to an address that was reasonably calculated to reach Cliffs on the Bay Condominium Association and in failing to notify Cliffs on the Bay Condominium Association at the registered office and mailing address that

Cliffs on the Bay Condominium Association had provided the State of Michigan on an ongoing basis, as a corporation chartered in this state.

17. That Cliffs on the Bay Condominium Association claims an interest in the above described property as the fee title owner thereof which has not lost its interest therein due to the failure of the State of Michigan to comply with its own statutory requirements.

Dated: Feb. 27, 1991, 1991.

/s/ William Wilkins
William Wilkins

STATE OF MICHIGAN
COUNTY OF WASHTENAW

On Feb. 27, 1991, 1991, William Wilkins appeared before, and stated under oath that he is the President of Cliffs on the Bay Condominium Association, a Michigan non-profit corporation, and that this document was signed in behalf of the corporation, by authority of its Board of Directors, and he acknowledged this document to be the free act and deed of the corporation.

/s/ Aline C. Vercruysse
Notary Public
Washtenaw County, Michigan
My commission expires:
1-23-94

This document prepared
by and when recorded
return to:
Karl R. Frankena
Conlin, McKenney &
Philbrick, P.C.
700 City Center Building
Ann Arbor, Michigan
48104

13:doc:cotbaff

ALINE C. VERCRUYSSE
NOTARY PUBLIC STATE
OF MICHIGAN
WASHTENAW COUNTY
MY COMMISSION EXP
JAN. 23, 1994

WITNESS /s/ Mark Vercruysse
Mark Vercruysse

/s/ Nancy I. Brewer
Nancy I. Brewer